

Federal Communications Commission

§ 76.205

the nationally distributed superstation carrying the programming for which deletion is requested pursuant to paragraph (d) of this section.

[65 FR 68101, Nov. 14, 2000, as amended at 70 FR 76530, Dec. 27, 2005]

§ 76.124 Requirements for invocation of protection.

For a television broadcast station licensee or distributor of syndicated programming to be eligible to invoke the provisions of § 76.122 or § 76.123 of this subpart, it must have a contract or other written indicia that it holds network program non-duplication or syndicated exclusivity rights for the exhibition of the program in question. Contracts entered on or after November 29, 2000, must contain the following words: “the licensee [or substitute name] shall, by the terms of this contract, be entitled to invoke the protection against duplication of programming imported under the Statutory Copyright License, as provided in § 76.122 or § 76.123 of the FCC rules [or ‘as provided in the FCC’s satellite network non-duplication or syndicated exclusivity rules’].” Contracts entered into prior to November 29, 2000, must contain the foregoing language plus a clear and specific reference to the licensee’s authority to exercise exclusivity rights as to the specific programming against signal carriage by the satellite carrier in question, or by satellite carriage in general in a protected, geographic or specified zone. In the absence of such a specific reference in contracts entered into prior to November 29, 2000, the provisions of these rules may be invoked only if the contract is amended to include the specific language referenced in this section or a specific written acknowledgment is obtained from the party from whom the broadcast exhibition rights were obtained that the existing contract was intended, or should now be construed by agreement of the parties, to include such rights. A general acknowledgment by a supplier of exhibition rights that specific contract language was intended to convey rights under these rules will be accepted with respect to all contracts containing that specific language. Nothing in this section shall be construed as a grant of exclusive

rights to a broadcaster where such rights are not agreed to by the parties.

§ 76.125 Indemnification contracts.

No television broadcast station licensee shall enter into any contract to indemnify a satellite carrier for liability resulting from failure to delete programming in accordance with the provisions of this subpart unless the licensee has a reasonable basis for concluding that such program deletion is not required by this Subpart.

§ 76.130 Substitutions.

Whenever, pursuant to the requirements of the network program non-duplication or syndicated program exclusivity rules, a satellite carrier is required to delete a television program from retransmission to satellite subscribers within a zip code area, such satellite carrier may, consistent with this subpart, substitute a program from any other television broadcast station for which the satellite carrier has obtained the necessary legal rights and permissions, including but not limited to copyright and retransmission consent. Programs substituted pursuant to this section may be carried to their completion.

[65 FR 68101, Nov. 14, 2000, as amended at 79 FR 63562, Oct. 24, 2014]

Subpart G—Cablecasting

§ 76.205 Origination cablecasts by legally qualified candidates for public office; equal opportunities.

(a) *General requirements.* No cable television system is required to permit the use of its facilities by any legally qualified candidate for public office, but if any system shall permit any such candidate to use its facilities, it shall afford equal opportunities to all other candidates for that office to use such facilities. Such system shall have no power of censorship over the material broadcast by any such candidate. Appearance by a legally qualified candidate on any:

- (1) Bona fide newscast;
- (2) Bona fide news interview;

(3) Bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary); or

(4) On-the-spot coverage of bona fide news events (including, but not limited to political conventions and activities incidental thereto) shall not be deemed to be use of a system. (section 315(a) of the Communications Act.)

(b) *Uses.* As used in this section and § 76.206, the term “use” means a candidate appearance (including by voice or picture) that is not exempt under paragraphs 76.205 (a)(1) through (a)(4) of this section.

(c) *Timing of request.* A request for equal opportunities must be submitted to the system within 1 week of the day on which the first prior use giving rise to the right of equal opportunities occurred: Provided, however, That where the person was not a candidate at the time of such first prior use, he or she shall submit his or her request within 1 week of the first subsequent use after he or she has become a legally qualified candidate for the office in question.

(d) *Burden of proof.* A candidate requesting equal opportunities of the system or complaining of noncompliance to the Commission shall have the burden of proving that he or she and his or her opponent are legally qualified candidates for the same public office.

(e) *Discrimination between candidates.* In making time available to candidates for public office, no system shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any system make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to cablecast to the exclusion of other legally qualified candidates for the same public office.

[57 FR 210, Jan. 3, 1992, as amended at 59 FR 14568, Mar. 29, 1994]

§ 76.206 Candidate rates.

(a) *Charges for use of cable television systems.* The charges, if any, made for the use of any system by any person who is a legally qualified candidate for any public office in connection with his or her campaign for nomination for election, or election, to such office shall not exceed:

(1) During the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the system for the same class and amount of time for the same period.

(i) A candidate shall be charged no more per unit than the system charges its most favored commercial advertisers for the same classes and amounts of time for the same periods. Any system practices offered to commercial advertisers that enhance the value of advertising spots must be disclosed and made available to candidates upon equal terms. Such practices include but are not limited to any discount privileges that affect the value of advertising, such as bonus spots, time-sensitive make goods, preemption priorities, or any other factors that enhance the value of the announcement.

(ii) The Commission recognizes non-preemptible, preemptible with notice, immediately preemptible and run-of-schedule as distinct classes of time.

(iii) Systems may establish and define their own reasonable classes of immediately preemptible time so long as the differences between such classes are based on one or more demonstrable benefits associated with each class and are not based solely upon price or identity of the advertiser. Such demonstrable benefits include, but are not limited to, varying levels of preemption protection, scheduling flexibility, or associated privileges, such as guaranteed time-sensitive make goods. Systems may not use class distinctions to defeat the purpose of the lowest unit charge requirement. All classes must be fully disclosed and made available to candidates.

(iv) Systems may establish reasonable classes of preemptible with notice time so long as they clearly define all